

Meals

Contract #04-067

PURCHASE OF SERVICE CONTRACT

Parties and Contract Period

This contract is between **Marinette County Health & Human Services Department**, whose business address is **2500 Hall Avenue, Suite B, Marinette WI 54143**, hereinafter referred to as Purchaser and <<<Provider name>>> whose business address is <<<Provider address>>>, hereinafter referred to as Provider. This contract is to be effective for the period **January 1, 2004 through December 31, 2004**.

The Provider employee responsible for day-to-day administration of this contract will be <<<Provider name>>>, <<<Provider phone>>> whose business address is <<<Provider address>>>. In the event that the administrator is unable to administer this contract, Provider will contact Purchaser and designate a new administrator.

The Purchaser employee responsible for day-to-day administration of this contract will be <<<contact person>>>, <<<phone>>> whose business address is **2500 Hall Avenue, Suite B, Marinette, WI 54143**. In the event that the administrator is unable to administer this contract, Purchaser will contact Provider and designate a new administrator.

Article 1 Audit

Section 1.1 Type of audit

The Provider shall submit an annual agency-wide audit to the Purchaser if the total amount of annual funding provided by the Purchaser through this and other contracts is \$25,000 or more.

Section 1.2 Audit Standards

The audit shall be in accordance with the requirements of OMB Circular 1-133 "Audits of States, Local Governments, and Non-Profit Organizations" (on line at www.whitehouse.gov/omb/circulars) if the provider meets the criteria of the Circular for needing an audit in accordance with the Circular. The audit shall also be in accordance with the following department standard:

- a. The *State Single Audit Guidelines* (on line at www.ssag.state.wi.us) if the Provider is a local government that meets the criteria of OMB Circular A-133 for needing an audit in accordance with that Circular of
- b. The *Provider Agency Audit Guide* (on line at www.dhfs.state.wi.us/grants) for all other Providers.

Section 1.3 Audit Schedules

In addition to the schedules required under the *State Single Audit Guidelines* or the *Provider Agency Audit Guide*, the reporting package sent to the Purchaser shall include a supplemental schedule showing revenue and expenses for this contract.

For profit providers shall include a schedule in their audit reports showing the total allowable costs and the calculation of the allowable profit by contract or by service category.

Non-profit providers shall include a Reserve Supplemental Schedule (Section 7.1.6 of the *Provider Agency Audit Guide*) in their audit reports, and this schedule shall also be by contract or service category.

Section 1.4 Submitting the Reporting Package

The Provider shall send the required reporting package to the Purchaser at the address listed in this contract. The reporting Package is due to the Purchaser within 180 days of the end of the Provider's fiscal year.

Section 1.5 Access to auditor's work papers

When contracting with an audit firm, the Provider shall authorize its auditor to provide access to work papers, reports, and other materials generated during the audit to the appropriate representatives of the Purchaser. Such access shall include the right to obtain copies of the work papers and computer disks, or other electronic media, which document the audit work.

Section 1.6 Failure to comply with the requirements of this section

If the Provider fails to have an appropriate audit performed or fails to provide a complete audit-reporting package to the Purchaser within the specified timeframe, the Purchaser may:

- a. Conduct an audit or arrange for an independent audit of the Provider and charge the cost of completing the audit to the provider;
- b. Charge the Provider for all loss of federal or state aid or for penalties assessed to the Purchaser because the Provider did not submit a complete audit report within the required time frame;
- c. Disallow the cost of the audit that did not meet the applicable standards/ and/or
- d. Withhold payment, cancel the contract, or take other actions deemed by the Purchaser to be necessary to protect the Purchaser's interests.

Article 2 Caregiver Background Checks

The Purchaser and the Provider agree that the protection of the clients served under this contract is paramount to the intent of this contract. In order to protect the clients served, the Provider shall comply with the provisions of HFS 12, Wis. Admin. Code (online at <http://www.legis.state.wi.us/rsb/code/index.html>)

Section 2.1 Provider Screening/Background checks

Provider Screening Requirements: All persons who provide direct contact with the clients of the Purchaser shall be subject to criminal and caregiver background checks at the Provider's own expense. The Provider shall retain in its Personnel Files all pertinent information, to include a Background information Disclosure Form and/or search results from the Department of Justice, the Department of Health and Family Services, and the Department of Regulation and Licensing, as well as out of state records, tribal court proceedings and military records, if applicable.

Both types of background checks must be repeated every four years., or at any time within that period when the Provider has reason to believe a new check should be obtained.

Persons who are listed on the caregiver register, or who are found to have committed a crime substantially related to the provision of these services such as misappropriation of participant funds, shall not be considered qualified for the provision of this service. Persons providing these services shall comply with all relevant provisions of Section 1.05 of Chapter IV of the Medicaid Waivers Manual.

Section 2.2 Records

The Provider shall maintain the results of background checks on its own premises for at least the duration of the contract. The Purchaser may audit the Provider's personnel files to assure compliance with the State of Wisconsin Caregiver Background Check Manual (online at <http://www.dhfs.state.wi.us/caregiver/publications/CgvrProgMan.htm>).

Section 2.3 Assignment of staff

The Provider shall not assign any individual to conduct work under this contract who does not meet the requirement of this law.

Section 2.4 Notification to Purchaser

Providers must communicate with county staff and other providers within confidentiality laws, any incidents or situations regarded as Critical Incidents as defined in the Medicaid Home and Community-Based Services Waivers Manual, Chapter 9.

The Provider shall notify the Purchaser in writing via certified mail within one business day if an employee has been charged with or convicted of any crime specified in HFS 12.07(2) (online at <http://www.legis.state.wi.us/rsb/code/index.html>).

Article 3 Civil Rights Compliance Plan

Article 3 Civil Rights Compliance Plan

The Civil Rights Compliance (CRC) Plan contains three components that cover Affirmative Action, Civil Rights/Equal Employment Opportunity, and Language Access. Providers that have more than twenty-five (25) employees and receive more than twenty five thousand dollars (\$25,000) must develop and submit a Civil Rights Compliance Plan with all the three components mentioned above.

Providers that have less than twenty-five (25) employees or receive less than a total of twenty five thousand (\$25,000) dollars must develop and submit a Letter of Assurance.

Section 3.1 Affirmative Action Component

- A. Affirmative Action (AA) is the first component of the CRC Plan. A Provider must develop and submit an Affirmative Action Plan that covers a two or three-year period.
- B. A Provider may request an exemption from submitting an AA Plan if it:
 - 1. Has an annual work force of less than twenty-five (25) employees,
 - 2. Is a governmental entity (e.g., county, municipality or state university), or
 - 3. Has a balanced work force.
- C. Nevertheless, exempt Providers that do not have a balanced work force in specific job groups are required to develop and submit a recruitment strategy to address under-representation of the job group.

- D. "Affirmative Action Plan" is a written document that details an affirmative action program. Key parts of an affirmative action plan are:
1. a policy statement pledging nondiscrimination and affirmative action employment,
 2. internal and external dissemination of the policy,
 3. assignment of a key employee as the Equal Opportunity Coordinator,
 4. a workforce analysis that identifies job classifications where representation of women, minorities and the disabled are deficient,
 5. Goals and timetables that are specific and measurable and that are set to correct deficiencies and to reach a balanced workforce,
 6. a revision of employment practices to ensure that they do not have discriminatory effects, and
 7. the establishment of internal monitoring and reporting systems to measure progress regularly.
- E. A non-exempt Provider shall conduct, keep on file, and update annually a separate and additional accessibility self-evaluation of all programs and facilities, including employment practices for compliance with the Americans with Disabilities Title I regulations, unless an updated self-evaluation under Section 503 of the Rehabilitation Act of 1973 exists which meets the ADA requirements.

Section 3.2 Civil Rights/Equal Employment Opportunity Components

- A. Civil Rights is the second component of the CRC Plan that must be developed and submitted. The civil rights requirements address non-discrimination in service delivery to clients, consumers, or patients.
1. All Providers must have the following policies and procedures to ensure that no otherwise qualified person shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of race, color, national origin, sexual orientation, religion, sex, disability or age.
 2. This policy covers eligibility for and access to service delivery and equal treatment in all programs and activities. All employees of the Providers are expected to support goals and programmatic activities relating to nondiscrimination in service delivery.
- B. Equal Employment Opportunity is another part to the second component in the CRC Plan. It addresses the requirements that the Provider must put in place to ensure non-discrimination in all employment conditions. The federal and state laws state that:
1. No otherwise qualified person shall be excluded from employment, be denied the benefits of employment or otherwise be subject to discrimination in employment in any manner or term of employment on the basis of age, race/ethnicity, religion, gender, sexual orientation, color, national origin or ancestry, disability (as defined in Section 504 of the Rehab Act and the Americans with Disabilities Act), arrest or conviction record, marital status, political affiliation, military participation, the use of legal products during non-work hours, non-job related genetic and honesty testing. All employees are expected to support goals and programmatic activities relating to non-discrimination in employment.

2. The Provider shall post the Equal Opportunity Policy, the name of the Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, and applicants for employment and employees. The complaint process will be according to Purchaser's policies and procedures and made available in languages and formats understandable to applicants, clients and employees. The Purchaser will continue to provide appropriate translated program brochures and forms for distribution.
3. The Provider agrees to comply with the Purchaser's guidelines in the Civil Rights Compliance Plan Standards and a Resource Manual for Equal Opportunity in Service Delivery and Employment for the Wisconsin Department of Health and Family Services, its Service Providers and their Subcontractors.
4. Requirements herein stated apply to any subcontracts or grants. The Purchaser has primary responsibility to take constructive steps, as per the CRC Standards, to ensure the compliance of its subcontractors or grantees.
5. If a Provider of a county is a direct provider of the Department, this Provider will be required to develop and submit a CRC Plan to the Department. The county need not require this Provider to submit a second copy to the county.
6. The purchaser will monitor the Civil Rights Compliance of the Provider. The purchaser will conduct reviews to ensure that the Provider is ensuring compliance by its subcontractors or grantees according to guidelines in the CRC Standards. The Provider agrees to comply with Civil Rights monitoring reviews, including the examination of records and relevant files maintained by the Provider, as well as interviews with staff, clients, and applicants for services, subcontractors, grantees, and referral agencies. The reviews will be conducted according to Department of Health and Family Services procedures. The purchaser will also conduct reviews to address immediate concerns of complainants.
7. The Provider agrees to cooperate with the purchaser in developing; implementing and monitoring corrective action plans that result from complaint investigations or monitoring efforts.

Section 3.3 Language Access Plan

- A. Language Access is the third component in the CRC Plan. It addresses the way programs and services are provided for persons with disabilities and Limited English Proficient (LEP) speakers.
- B. For persons with disabilities, the Provider agrees that it will:
 1. Provide competent sign language interpreters for deaf or hard of hearing participants free of charge at any stage of application or receipt of services;
 2. Provide aids, assistive devices and other reasonable accommodations to the client during the application process, in the receipt of services, and in the processing of complaint or appeals;
 3. Train staff in human relations techniques, sensitivity to persons with disabilities and sensitivity to cultural characteristics;

4. make programs and facilities accessible, as appropriate, through outstations, authorized representatives, adjusted work hours, ramps, doorways, elevators, or ground floor rooms, and Braille, large print or taped information for the visually or cognitively impaired;
5. Post and/or make available informational materials in formats appropriate to the needs of the client population.

C. For limited English Proficient (LEP)

- The number or proportion of LEP persons eligible to be served or likely to be encountered by the Provider;
- The frequency with which LEP individuals come in contact;
- The nature and importance of the program, activity, or service provided by the program to people's lives, and
- The resources available to the Provider.

D. Upon the consideration of the four factors, the LEP policies require that the Provider have the following program components:

1. Analyze its service area to assess the primary language needs of the participants that it serves or encountered;
2. Establish a plan that will make oral interpretation available and free of charge upon request.
3. Disseminate written notice in the primary language of the LEP group that interpretation is available and free of charge to groups that constitute less than 50 individuals eligible to be served or encountered;
4. Provide written translations of vital documents to LEP participants that constitutes at least 5% or 1,000 LEP individuals, whichever is less, for the populations served or encountered.
5. Train staff about the Provider's LEP policies and procedures;
6. Collect data on primary language use of LEP participants to evaluate the program's effectiveness; and
7. Identify the LEP Coordinator and establish a complaint process that is accessible to LEP participants.

E. The provider will, to the extent possible, hire bilingual staff, work with community associations, contract with competent interpreters or other ways to ensure accurate interpretation while providing critical health care to an LEP consumer of patient.

Article 4 Client Funds

All client funds shall be handled by the Purchaser. The Provider shall not handle client funds.

Article 5 Client Rights and Grievances

The Provider shall have a formal written grievance procedure that is approved by the licensing or certification authority, if applicable, and by the Purchaser. The Provider shall, prior to or at the time of admission to the Program, provide oral and written notification to each client of his or her rights and the grievance procedure. The Provider shall post the client rights and the grievance procedure in an area readily available to clients and staff of the program.

The provider shall give the Purchaser a written report for each grievance that is filed in writing against the provider by any clients or their guardians. The Provider shall deliver these reports to the Purchaser in person or via registered mail within 5 business days of the Providers receipt of the grievance. The Provider shall also inform the Purchaser in writing of the resolution of each grievance.

At least once a year, or more frequently when requested by the Purchaser, the Provider shall give the Purchaser a written summary report of all grievances that have been filed with the Program by clients or their guardians since the period covered by the previous summary report and of the resolution of each grievance. The Provider shall deliver the annual summary report to the Purchaser in person or via registered mail within 30 days of the end of the contract period. Additional summary reports requested by the Purchaser shall be due within 10 days of the Purchaser's request for the reports. All reports shall be delivered to the Purchaser in person or via registered mail.

Article 6 Conditions of the Parties' Obligations

Section 6.1 Contingency

This contract is contingent upon authorization of Wisconsin and United States laws and any material amendment or repeal of the same affecting relevant funding or authority of the Department of Health and Family Services shall serve to terminate this Agreement, except as further agreed to by the parties hereto.

Section 6.2 Powers and Duties

Nothing contained in this contract shall be construed to supersede the lawful powers or duties of either party.

Section 6.3 Items Comprising the Contract

Is understood and agreed that the entire contract between the parties is contained herein, except for those matters incorporated herein by reference, and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.

Article 7 Confidentiality

Section 7.1 Client confidentiality

The provider shall not use or disclose any information concerning eligible clients who receive services from Provider for any purpose not connected with the administration of Provider's or Purchaser's responsibilities under this contract, except with the informed, written consent of the eligible client or the client's legal guardian.

Section 7.2 Contract not confidential

Except for documents identifying specific clients, the contract and all related documents are not confidential.

Article 8 Conflict of Interest

The provider shall ensure the establishment of safeguards to prevent employees, consultants, or members of the board from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business, or other ties.

Article 9 Debarment and Suspension

The provider certifies through signing this contract that neither the Provider nor any of its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in federal assistance programs by any federal department or agency. In addition, the Provider shall notify the Purchaser within five business days in writing and sent by registered mail if the Provider or its principals receive a designation from the federal government that they are debarred, suspended, proposed for debarment, or declared ineligible by a federal agency. The Purchaser may consider suspension or debarment to be may by cause for implementing high risk contract provisions under Article 23 "Special conditions for high risk contract" or for revising or terminating the contract under Article 21 "Revision or termination of the contract."

Article 10 Eligibility

The Provider shall provide services only to individuals who are eligible for services. The Provider and Purchaser agree that the eligibility of individuals to receive the services to be purchased under this Agreement from the Provider will be determined by the Purchaser.

An individual is entitled to the right of a fair hearing concerning eligibility and the Purchaser shall inform individuals of this right. The Provider shall provide clients with information concerning their eligibility rights and how to appeal those rights.

Article 11 Health Insurance Portability and Accountability Act of 1996 "HIPAA" Applicability

Section 9.1 General Applicability

The Provider agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent those regulations apply to the services the Provider provides or purchases with funds provided under this contract.

Section 9.2 Business Associate Agreement

In addition, certain functions included in this agreement may be covered within HIPAA rules. As such the Purchaser must comply with all provisions of the law and has determined that Provider is a "Business Associate" within the context of the law. As a result, the Purchaser requires Provider to sign and return with this contract the Business Associate Agreement, which will be included and made part of this agreement.

Article 12 Indemnity and Insurance

Section 12.1 Indemnity

The Provider agrees that it will at all times during the existence of this Contract indemnify the Purchaser against any and all loss, damages, and costs or expenses which the Purchaser may sustain, incur or be required to pay by reason of any eligible client's suffering, personal injury, death or property loss resulting from participating in or receiving the care and services to be furnished by the Provider under this Agreement. However, the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by the Purchaser.

Section 12.2 Insurance

Provider agrees that, in order to protect itself as well as Purchaser under the indemnity provision set forth in the above paragraph, Provider will at all times during the terms of this Contract keep in force a liability insurance policy issued by a company authorized to do business in the State of Wisconsin and licensed by the State of Wisconsin and licensed by the Office of the Commissioner of Insurance. Upon signing this Contract, Provider will furnish Purchaser with a "Certificate of Insurance" verifying the existence of such insurance. In the event of any action, suit, or proceedings against Purchaser upon any matter indemnified against, Purchaser shall notify the purchaser by certified mail within five working days.

Article 13 Independent Contractor

Nothing in this contract shall create a partnership or joint venture between the Purchaser and the Provider. The Provider is at all times acting as an independent contractor and is in no sense an employee, agent or volunteer of the Purchaser.

Article 14 Licenses, Certification, and Staffing

Section 14.1 License and Certification

The Provider shall meet state and federal services standards and applicable state licensure and certification requirements as expressed by state and federal rules and regulations applicable to the services covered by this contract. The Provider shall attach copies of its license or certification document and the most recent licensing or certification report concerning the provider to this contract when returning the signed contract to the Purchaser. During the contract period, the Provider shall also send the Purchaser copies of any licensing inspection reports within 5 days of receipt of such reports.

Section 14.2 Staffing

The Provider shall ensure that staff providing services are properly supervised and trained and that they meet all of the applicable licensing and certification requirements.

Article 15 Liquidated Damages

Section 15.1 Noncompliance Resulting in Liquidated Damages

The parties agree that any delays or failures by the Provider to perform under this contract, as specified below, may result in damage to the Purchaser. The parties further agree that the amount of damage would be difficult to calculate and thus will be the amount set forth below as liquidated damages. The Provider shall not be charged with liquidated damages when the delay or failure arises out of causes beyond the control and without the fault or negligence of the Provider.

If the Purchaser determines that the Provider has failed to provide adequate care resulting in the Purchaser placing clients in other facilities, the Purchaser may assess liquidated damages. The Purchaser will provide the Provider with a written notice of assessment and the Provider shall pay \$200.00 per day for each day that the failure occurred, but not to exceed 30 days.

Section 15.2 Payment of Liquidated Damages

Amounts due the Purchaser as liquidated damages may be deducted by the Purchaser from any money payable to Provider under this contract, or the Purchaser may bill the Provider as a separate item and the Provider shall immediately make payments on such bills.

If the delay or failure causes the Purchaser to terminate this contract in whole or in part, the Provider remains liable for liquidated damages until the time the Purchaser may reasonably obtain performance of similar services.

Article 16 Matching, Level of Effort and Earmarking

No Matching, level of effort or earmarking requirements.

Article 17 Payment and Allowable Cost

Section 17.1 Amount paid under contract

The maximum payment under this contract is **\$38,640.00**. Actual total payment will be based upon the amount of service authorized by the Purchaser and the amount of service performed by Provider. It is understood and agreed by all parties that the Purchaser assumes no obligation to purchase from the Provider any minimum amount of services as defined in the terms of this contract.

Section 17.2 Basis for Payments

Payments for services covered by this contract shall be made on a unit-times-unit-price basis with limited profit or reserve and in accordance with the "order of payment" requirements for the funding program, less client fees and other collection made by the Provider for services covered by this contract. Final settlement of the contract will be based on audit.

Section 17.2.1 Units and prices – The units and prices for each service purchased from the Provider are included in the table below:

SPC or HIPAA code for service	<u>Service</u>	# of Clients (a)	Client Services Unit** (b)	Rate/Unit* (excluding room & board) (c)	Room & board/ unit (d)	Total per service (e) axbx(c+d)
	Meals		6720 meals	\$5.75/meal		\$38,640.00
Contract total (sum of column e)						\$38,640.00

The Purchaser shall determine the type of services provided and the number of units of services provided for each client. The Purchaser will not reimburse the Provider for any unit of service not previously authorized by the Purchaser.

(See Article 22 "Services to be Provided" for description of the services purchased under this contract.)

(See Article 21 "Revision or termination of the contract" for revision of units or prices.)

Section 17.2.2 Profit or reserves– The purchaser allows the Provider to have profit (for-profit providers only) or reserve (non-profit provides only). The profit and reserve are limited by expenditures on allowable cost that the Provider incurs in performing the services purchased under this contract. Allowable costs, profit, and reserve are defined in the Allowable Cost Policy Manual (online at <http://www.dhfs.state.wi.su/grants/Administration/ACPM.HTM>).

Section 17.2.3 Client fees and third party collections – The Purchaser is responsible for all billing and collection for amounts due from clients and third parties. The Provider shall not collect any funds from clients or from third parties.

Section 17.2.4 Audit – The amount earned under this contract shall be confirmed through an annual audit (see Section 1 “Audit”). For profit providers shall include a schedule in their audit reports showing the total allowable costs and the calculation of the allowable profit by contract or by service category. Non-profit providers shall include a Reserve Supplemental Schedule (Section 7.1.6 of the *Provider Agency Audit Guide*) in their audit reports, and this schedule shall also be by contract or service category.

Section 17.3 Advance and surety bond

Section 17.3.1 Payment of the advance – If the Provider requests an advance payment will be made as soon as possible after the contract is signed by both parties, the Purchaser shall make an advance to the Provider in the amount of 1/12th of the maximum dollar amount to be paid under this contract.

Section 17.3.2 Surety bond – The Provider shall supply a Surety Bond for advance payments that exceeds \$10,000.00 per s.46.036(3)(f), Wis. Stats. The Surety Bond must be for an amount equal to the amount of the advance payment and must accompany the signed contract that is returned to the purchaser. The insurer issuing the surety bond must be licensed to conduct surety business in Wisconsin. The insurer shall use a bond form acceptable to the Purchaser.

Section 17.3.3 Recoupment of the advance - The advance will be recouped during the last three months of the contract period, or when payments made under the contract equal or exceed seventy-five percent of the contract amount. A final cash adjustment will be done after reconciliation of the Contract amounts to actual final reported expenses.

Section 17.4 Reporting for payment

Each month, the Provider shall report the units of service provided during the month on the forms provided by the Purchaser. All information reported to the Purchaser shall be supported by the Provider's records. The report is due to the Purchaser on the 15th day following the end of the report month. If the Provider's report is complete and timely, the expected payment date is the 20th day following the end of the report month. (See Article 18 “Records” and Article 19 “Reporting.”)

Section 17.5 Payment in excess of earned amount

Provider shall return to Purchaser funds paid in excess of the amount earned under this contract within 90 days of the end of the contract period. If the Provider fails to return funds paid in excess of the amount earned, the Purchaser may recover the excess payment from subsequent payments made to the Provider or through other collection means. The allowable cost of standard programs shall be determined pursuant to the Department of Health and Social Services' *Allowable Costs Policy Manual*.

Article 18 Records

Section 18.1 Maintenance of records

Provider shall maintain such records and financial statements as required by state and Federal laws, rules, and regulations.

Section 18.2 Access to records

The Provider shall permit appropriate representatives for the Purchaser to have timely access to the Provider's records and financial statements as necessary to review the Provider's compliance with contract requirements for the use of the funding.

Article 19 Reporting

Provider shall comply with the reporting requirements of Purchaser. All reports shall be in writing and, when applicable, in the format specified by the Purchaser. All reports shall be supported by the Providers records (See XI "Records").

Article 20 Resolution of Disputes

The Provider may appeal decisions of the Purchaser in accordance with the terms and conditions of the contract and Chapter 68, Wis. Stats.

Article 21 Revision or Termination of this Contract

Section 21.1 Cause for revision or termination of this contract

Failure to comply with any part of this contract may be considered cause for revision, suspension, or termination.

Section 21.2 Revision of this contract

Either party may initiate revision of this contract. Revision of this contract must be agreed to by both parties by an addendum signed by their authorized representative.

Section 21.3 Termination of this contract

Either party may terminate this contract by a 30-day written notice to the other party.

Upon termination, the Purchaser's liability shall be limited to the costs incurred by the Provider up to the date of termination. If the Purchaser terminates the contract for reasons other than non-performance by the Provider, the Purchaser may compensate the Provider for an amount determined by mutual agreement of both parties.

Article 22 Services to be Provided

Section 22.2 Developing Individual Service Plans/ISP

The Provider shall develop an Individual Service Plan for each client within 30 days following the date the Purchaser referred the client to the Provider. The Provider shall: (a) ensure that the Individual Service Plan complies with applicable standards; and (b) promptly submit the plan upon completion to the Purchaser for review and approval. The Provider agrees to work with the Purchaser as necessary when the Provider is developing an Individual Service Plan.

The Provider agrees to work with the Purchaser when the Purchaser is developing the Purchaser's Individual Service Plan.

Section 22.3 Implementing Individual Service Plans

The Provider shall provide the service specified in this Article and in the Provider's Individual Service Plan for each client, as authorized by the Purchaser. In providing services, the Provider shall:

- a. Transfer a Client from one category of care or service to another only with the approval of the Purchaser (s. 46.036(4)(d) Wis. Stats.).
- b. Coordinate with other service providers as necessary to achieve the client's goals as identified in the Purchaser's and Providers Individual Service Plans;
- c. Obtain service from another party only with prior written approval from the Purchaser. If the Provider obtains services for any part of this Agreement from another party, the Provider is responsible for fulfillment of the terms of the contract.

Section 22.4 Inability to provide quality or quantity of services

The Provider shall notify the Purchaser in writing and delivered in person or by registered mail whenever it is unable to provide the required quality or quantity of services. Upon such notification, the Purchaser and Provider shall determine whether such inability will require a revision or termination of this contract. (See Article 21 "Revision or termination of the contract.")

Section 22.5 Documentation of quality and quantity of services

The Provider shall retain all documentation necessary to adequately demonstrate the time, duration, location, scope, quality, and effectiveness of services rendered under the contract. The Purchaser reserves the right to not pay for units of services reported by the Provider that are not supported by documentation required under this contract.

Section 22.6 Standards for performance in delivery of services

The Purchaser will monitor the Provider's performance and will use the results of this monitoring to evaluate the Provider's ability to provide adequate services to clients. If the Provider fails to meet contract goals and expected results, the Purchaser may reduce or terminate the contract.

Section 22.7 Assessing performance in delivery of services

The Purchaser retains sole authority to determine whether the Provider's performance under the contract is adequate. The Provider agrees to the following:

- a. The Provider shall allow the Purchaser's care manager and contracting staff to visit the Provider's facility or work site at any time for the purposes of ensuring that services are being provided as specified in the Plan of Care and the contract.
- b. Upon request by the Purchaser or its designee, the Provider shall make available to the Purchaser all documentation necessary to adequately assess Provider performance.
- c. The Provider will cooperate with the Purchaser in its efforts to implement the Purchaser's quality improvement and quality assurance program.
- d. The Providers shall develop and implement a process for assessing client satisfaction with services provided. The Provider shall report in a timely manner the results of its client satisfaction assessment effort to the Purchaser. The Purchaser reserves the right to review and approve the Provider's client satisfaction assessment process, and to require the Provider to submit a corrective action plan to address concerns identified in the review.
- e. The Provider shall cooperate with the Purchaser in implementing the Purchaser's program for assessing client satisfaction with services. The Purchaser reserves the right to require the Provider to submit a corrective action plan to address concerns identified in the review.

Article 23 Special Provisions for High Risk Contract

The Purchaser has determined that this is a high-risk contract. The Provider recently began operations. To mitigate the risks for a new Provider, the Provider shall:

- a. Hire a bookkeeper to keep financial records and to start at the beginning of the contract period and attach the bookkeeper's name, address, and telephone number to this contract.
- b. Hire an auditor to perform the annual audit and attach a copy of the signed engagement letter to this contract.

The Purchaser may unilaterally implement other charges depending on experience with the contract:

- a. Modifying the payment method to a cost reimbursement basis;
- b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
- c. Requiring additional, more detailed financial reports;
- d. Requiring the Provider to obtain technical or management assistance;
- e. Establishing additional prior approvals; or management assistance;
- f. Establishing additional prior approvals;
- g. Other conditions that the Purchaser considers appropriate considering the circumstances.

Signatures

- A. This contract is agreed upon and approved by the authorized representative's of **Marinette County Health and Human Services** and <<<Provider name>>> as indicated below.
- B. This contract becomes null and void if the time between the purchaser's authorized representative signature and the provider's authorized representative signature on this contract exceeds sixty days.

For Purchaser:

L. William Topel _____
Director

Date

Katherine K. Brandt _____
County Clerk

Date

For Provider:

<<<Provider name>>> _____
Administrator

Date

BUSINESS ASSOCIATE AGREEMENT

As required under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")

This Agreement ("Agreement") amends and is hereby incorporated into the existing agreement known as Purchase of Service Contract #04-067 "Agreement", entered into by and between <<<Provider name>>> herein after referred to as "(Provider)" and Marinette County Health & Human Services Department herein after referred to as "(Purchaser)" on January 1, 2004.

This Agreement is specific to those Services and Programs included in the Agreement where it has been concluded that the (Provider) is performing specific functions on behalf of (Purchaser) that have been determined to be covered by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

[(Provider) functions or activities within this agreement may include, but are not limited to the following: (i) claims processing or administration,, (ii) data analysis, processing or administration, (iii) utilization review, (iv) quality assurance, (v) billing, (vi) benefit management, (vii) practice management, or (viii) repricing]

The (Purchaser) and (Provider) mutually agree to modify the Agreement to incorporate the terms of this Agreement to comply with the requirements of HIPAA's implementing regulations, Title 45, Parts 160 and 164 of the Code of Federal Regulations ("Privacy Rule"), dealing with the confidentiality of health or health-related information, and Title 45, Part 142 of the Code of Federal Regulations ("Security Rule"), dealing with the standards for the security of individual health information that is electronically maintained or transmitted, and Title 45, Part 162 of the Code of Federal Regulations ("Transaction Rule") dealing with standards for electronic transactions. If any conflict exists between the terms of the original Agreement and this Agreement, the terms of this Agreement shall govern.

1. Definitions:

- a. Protected Health Information (PHI) means any information, whether oral or recorded in any form or medium, that: (i) relates to the past, present or future physical or mental condition of any Individual; the provision of health care to an Individual; or the past, present or future payment of the provision of health care to an Individual; and (ii) identifies the Individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. PHI includes demographic information unless such information is de-identified according to the Privacy Rule.
- b. Individual means the person who is the subject of PHI, and shall include a person who qualifies under the Privacy Rule as a personal representative of the Individual.
- c. Capitalized terms used in this Agreement, but not otherwise defined shall have the same meaning as those terms in the HIPAA Rules.

2. Prohibition on Unauthorized Use or Disclosure of PHI: (Provider) shall not use or disclose any PHI it creates or receives on behalf of the (Purchaser) except as permitted or required by the Agreement or this Agreement, as permitted or required by law, or as otherwise authorized in writing by the (Purchaser).

3. Use and Disclosure of Protected Health Information: (Provider) may use or disclose PHI only for the following purpose(s):

- a. for the proper management and administration of named function or activity and provision of healthcare services within the named function or activity or,
 - b. for meeting its obligations as set forth in any agreements between the parties evidencing their business relationship, or
 - c. as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by The (Purchaser) or as required by applicable law, rule or regulation, or,
 - d. for Data Aggregation purposes for the Health Care Operations of the (Purchaser). [45 CFR §164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)] or,
 - e. for use in (Provider) operations as outlined in paragraph 4 below.
4. Use of PHI for Use in (Provider's) Operations: (Provider) may use and/or disclose PHI it creates or receives on behalf of the (Purchaser) to the extent necessary for (Provider's) proper management and administration, or to carry out (Provider's) legal responsibilities, only if:
 - a. The disclosure is permitted or required by law; or
 - b. (Provider) obtains reasonable assurances, evidenced by written contract, from any person or organization to which (Provider) shall disclose such PHI that such person or organization shall:
 - (i) hold such PHI in confidence and use or further disclose it only for the purpose for which (Provider) disclosed it to the person or organization, or as required by law; and
 - (ii) notify (Provider) who shall in turn promptly notify the (Purchaser), of any instance which the person or organization becomes aware of in which the confidentiality of such PHI was breached.
5. Safeguarding and Maintenance of PHI: For all PHI it creates or receives from or receives on behalf of the (Purchaser), (Provider) shall develop, implement, maintain, and use:
 - a. appropriate administrative, technical, and physical safeguards to prevent the improper use or disclosure of all PHI, in any form or media: and,
 - b. appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted PHI.

(Provider) shall document and keep these safeguards and security measures current and available for inspection, upon request. (Provider's) security measures must be consistent with HIPAA's Security regulations, Title 45, Part 142 of the Code of Federal Regulations ("Security Rule"), once these regulations are effective.
6. Subcontractors and Agents: (Provider) agrees to ensure that any agents, including subcontractors, to whom it provides PHI received from, or created or received by the (Provider) on behalf of the (Purchaser), agree to the same restrictions and conditions that apply to the (Provider) with respect to such information. This provision does not apply to the use or disclosure of PHI for Treatment by subcontractors who are providers of Health care within the named function or activity.
7. Compliance with Electronic Transactions and Code Set Standards: If (Provider) conducts any Standard Transaction as defined in 45 CFR §164.504 on behalf of the (Purchaser) within the named programs, (Provider) shall comply, and shall require any subcontractor or

agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the Code of Federal Regulations. (Provider) shall not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transactions for or on behalf of the (Purchaser) that:

- a. changes the definition, data condition, or use of a data element or segment in a standard Implementation Specification; or
- b. adds any data elements or segments to the Maximum Defined Data Set; or
- c. uses any code or data elements that are either marked "not used" in the standard's Implementation Specification(s) or are not in the standard's Implementation Specifications(s); or
- d. changes the meaning or intent of the standard's Implementations Specification(s).

(Provider) agrees to comply with all provisions of the HIPAA Standards for Electronic Transactions rules regarding additional requirements for health plans [if it is determined that the (Purchaser) is a Health Plan] as set forth in CFR §162.925 as follows:

a. General rules.

- (i) if an entity requests the (Provider) to conduct a Transaction as a standard Transaction, the (Provider) must do so.
- (ii) the (Provider) may not delay or reject a Transaction, or attempt to adversely affect the other entity or the Transaction, because the Transaction is a standard Transaction.
- (iii) the (Provider) may not reject a standard Transaction on the basis that it contains data elements not needed or used by the (Provider) (for example, coordination of benefits information).
- (iv) the (Provider) may not offer an incentive for a health care provider to conduct a Transaction covered by this part as a Transaction described under the exception provided for in CFR 45 §162.923(b).
- (v) the (Provider) that operates as a health care clearinghouse, or requires an entity to use a health care clearinghouse to receive, process, or transmit a standard Transaction may not charge fees or costs in excess of the fees or costs for normal telecommunications that the entity incurs when it directly transmits, or receives, a standard transaction to, or from, the (Provider).

b. Coordination of benefits. If the (Provider) receives a standard Transaction and coordinates benefits with another Health Plan (or another payer), it must store the coordination of benefits data it needs to forward the standard Transaction to the other Health Plan (or other payer).

c. Code sets. The (Provider) must meet each of the following requirements:

- (i) Accept and promptly process any standard Transaction that contains codes that are valid, as provided in subpart within this part.
- (ii) Keep code sets for the current billing period and appeals periods still open to processing under the terms of the health plan's coverage.

(The following paragraph may be replaced by one that states "(Provider) must be compliant with electronic Transactions and code set standards no later than October 16, 2002" if the (Purchaser) or (Provider) did not file an extension.)

As set forth in CFR 45 §162.900(b)(1)(2) and the Administrative Simplification Compliance Act (ASCA) and consistent with the (Purchaser's) extension filing, the (Provider) must be compliant with electronic Transactions and code set standards no later than October 16, 2003.

8. Access to PHI: At the direction of the (Purchaser), (Provider) agrees to provide access to any PHI held by (Provider) which the (Purchaser) has determined to be part of the (Purchaser's) Designated Record Set, in the time and manner designated by the (Purchaser). This access will be provided to the (Purchaser) or, as directed by the (Purchaser), to an Individual, in order to meet the requirements under the Privacy Rule.
9. Amendment or Correction to PHI: At the direction of the (Purchaser), (Provider) agrees to amend or correct PHI held by (Provider) and which the (Purchaser) has determined to be part of the (Purchaser's) Designated Record Set, in the time and manner designated by the (Purchaser).
10. Reporting of Unauthorized Disclosures or Misuse of PHI: (Provider) shall report to the (Purchaser) any use or disclosure of PHI not authorized by this Agreement or in writing by the (Purchaser). (Provider) shall make the report to the (Purchaser's) Privacy Official not less than one (1) business day after (Provider) learns of such use or disclosure. (Provider's) report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the PHI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what (Provider) has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action (Provider) has taken or shall take to prevent future similar unauthorized use or disclosure. (Provider) shall provide such other information, including a written report, as reasonably requested by the (Purchaser's) Privacy Official, or his or her designee.
11. Mitigating Effect of Unauthorized Disclosures or Misuse of PHI. (Provider) agrees to mitigate, to the extent practicable, any harmful effect that is known to (Provider) of a misuse or unauthorized disclosure of PHI by (Provider) in violation of the requirements of this Agreement.
12. Tracking and Accounting of Disclosures: So that the (Purchaser) may meet its accounting obligations under the Privacy Rule, (Provider) agrees to the following:
 - a. Disclosure Tracking. Starting April 14, 2003, for each disclosure not excepted under subsection (b) below, (Provider) will record for each disclosure of PHI it makes to the (Purchaser) or a third party of PHI that (Provider) creates or receives for or from the (Purchaser) (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom (Provider) made the disclosure, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of the disclosure. For repetitive disclosures which (Provider) makes to the same person or entity, including the (Purchaser), for a single purpose, (Provider) may provide (i) the disclosure information for the first of these repetitive disclosures, (ii) the frequency, periodicity or number of these repetitive disclosures, and (iii) the date of the last of these repetitive disclosures. (Provider) will make this log of disclosure information available to the (Purchaser) within five (5) business days of the (Purchaser's) request.
 - b. Exceptions from Disclosure Tracking. (Provider) need not record disclosure information or otherwise account for disclosures of PHI that meet each of the following conditions:

- (i) the disclosures are permitted under this Agreement, or are expressly authorized by the (Purchaser) in another writing; and,
- (ii) the disclosure is for one of the following purposes:
 - 1. the (Purchaser's) Treatment, Payment, or Health Care Operations;
 - 2. in response to a request from the Individual who is the subject of the disclosed PHI, or to that Individual's Personal Representative;
 - 3. made to persons involved in that individual's health care or payment for health care;
 - 4. for notification for disaster relief purposes;
 - 5. for national security or intelligence purposes; or,
 - 6. to law enforcement officials or correctional institutions regarding inmates.

c. Disclosure Tracking Time Periods. (Provider) must have available for the (Purchaser) the disclosure information required by this section for the six-year period preceding the (Purchaser's) request for the disclosure information (except (Provider) need have no disclosure information for disclosures occurring before April 14, 2003).

13. Accounting to the (Purchaser) and to Government Agencies. (Provider) shall make its internal practices, books, and records relating to the use and disclosure of PHI received from or on behalf of, or created for, the (Purchaser) available to the (Purchaser), or at the request of the (Purchaser), to the Secretary of the federal (Purchaser) of Health and Human Services (HHS) or his/her designee, in a time and manner designated by the (Purchaser) or the Secretary or his/her designee, for the purpose of determining the (Purchaser's) compliance with the Privacy Rule. (Provider) shall promptly notify the (Purchaser) of communications with HHS regarding PHI provided by or created by the (Purchaser) and shall provide the (Purchaser) with copies of any information (Provider) has made available to HHS under this provision.

14. Term and Termination:

- a. This Agreement shall take effect upon execution.
- b. In addition to the rights of the parties established by the underlying Agreement, if the (Purchaser) reasonably determines in good faith that (Provider) has materially breached any of its obligations under this Agreement, the (Purchaser), in its sole discretion, shall have the right to:
 - (i) exercise any of its rights to reports, access and inspection under this Agreement; and/or
 - (ii) require (Provider) to submit to a plan of monitoring and reporting, as the (Purchaser) may determine necessary to maintain compliance with this Agreement; and/or
 - (iii) provide (Provider) with a defined period to cure the breach; or
 - (iv) terminate the Agreement in accordance with statutes
- c. Before exercising any of these options, the (Purchaser) shall provide written notice of preliminary determination to (Provider) describing the violation and the action it intends to take.

15. Return or Destruction of PHI: Upon termination, cancellation, expiration or other conclusion of the Agreement, (Provider) shall:

- a. Return to the (Purchaser) or, if return is not feasible, destroy all PHI and in whatever form or medium that (Provider) received or created on behalf of the (Purchaser). This provision shall also apply to all PHI that is in the possession of subcontractors or agents of (Provider). In such case, (Provider) shall retain no copies of such information, including any compilations derived from and allowing identification of PHI. (Provider) shall complete such return or destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty- (30) day period, (Provider) shall certify on oath in writing to the (Purchaser) that such return or destruction has been completed.
- b. If (Provider) believes that the return or destruction of PHI is not feasible, (Provider) shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is not feasible, (Provider) shall extend the protections of this Agreement to PHI it receives or creates on behalf of the (Purchaser), and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the information infeasible, for so long as (Provider) maintains the PHI.

16. Miscellaneous:

- a. Automatic Amendment: Upon the effective date of any amendment to the HIPAA rules, this Agreement shall automatically amend so that the obligations imposed on (Provider) remain in compliance with such regulations.
- b. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the (Purchaser) to comply with the HIPAA Rules.
- c. *[This paragraph is optional]* (Provider) shall submit to the (Purchaser) plans for compliance with the HIPAA rules along with periodic reports of progress of the plan implementation. The plans and progress reports shall be in the manner, form and timeframe determined by the (Purchaser).

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

Marinette County Health & Human Services

<<<Provider name>>>

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ADDENDUM

MA Waivers Manual
Allowable Services

Chapter VI
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STANDARDS

Either Older Americans' Act program providers or other licensed food service providers must be used to provide the meals. These include restaurants, nursing homes, caterers, central kitchens, hospitals, public schools, etc. Older American's Act program providers, restaurants, caterers, central kitchens and public schools must comply with Wis. Stats. 50.50. Hospitals which provide home delivered meals must comply with HSS 124, Nursing homes which provide home delivered meals must comply with HSS 132.

Meals must assure adequate nutrition and must meet one third of the daily dietary needs of the person receiving the meal. Specially prepared meals due to unusual dietary requirements or restrictions will be reimbursed provided the cost of the meal is the same as that charged to an individual who is not a waiver participant (usual and customary).

DOCUMENTATION

The agency will maintain a vendor list which establishes that those provider(s) of home delivered meals on the list comply with HSS 196, HSS 124, HSS 132, Wis. Stats. 50.50 and/or is a Title III Older American's Act Program food provider.